IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 26TH JUNE 2007 / 5TH ASHADHA 1929

Crl.MC.No. 2016 of 2007()

AGAINST THE JUDGEMENT/ORDER IN CRRP.2704/2006 Dated 07/08/2006
CC.114/1996 of JUDL.MAGISTRATE OF FIRST CLASS COURT, ALATHUR

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PETITIONER:

R. RAJAN, S/O. RAMAN,
KANIYARKUNNU VEEDU,
MANGALAM, ALATHUR TALUK,
PALAKKAD DISTRICT.

BY ADV. SRI.SAJAN VARGHEESE K.
SRI.LIJU. M.P

RESPONDENTS:

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1. T. KRISHNAKUMAR,
S/O. CHAMUKUTTY NAIR,
AYISWARYA,
AYINAMPADAM,
PALAKKAD DISTRICT,
REP. BY HIS POWER OF ATTORNEY
HOLDER SMT. SHEELA KURUP,
W/O.T. KRISHNAKUMAR,
-DO- -DO-

2. STATE OF KERALA,
REP. BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM.

BY P.P. SRI.GIKKU JACOB.
BY ADV. SRI.K.LAKSHMINARAYANAN

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 26/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

Crl.M.C..NO.2016 OF 2007

Dated this the 26th day of June, 2007

ORDER

The petitioner was found guilty, convicted and sentenced in a prosecution under Sec.138 of the Negotiable Instruments Act. This Court, in revision, had reduced the sentence; but upheld the verdict of guilty and conviction. The petitioner now faces a sentence of imprisonment till rising of court. There is a further direction to pay compensation. A default sentence has also been prescribed. The petitioner along with the complainant has now come before this Court to apprise the Court that the matter has been settled between them. The entire claim for compensation has been settled and satisfied. The respondent/complainant has no further claim for any further amount. They pray that, in these circumstances, the dictum in **Sabu George v. Home Secretary (**2007 (1) KLT

982) may be invoked and the verdict of guilty, conviction and sentence may be set aside.

2. I am unable to agree. The dictum in **Sabu George v. Home Secretary (**2007 (1) KLT 982) is not that every post revision composition can be accepted and the verdict of guilty, conviction and sentence can be set aside. That decision has its foundation on the crucial fact that but for acceptance of the composition, the accused would have been obliged to remain in prison for a long period of time. The facts and circumstances of this case are entirely different. The petitioner need only undergo imprisonment till rising of court. The petitioner and the respondent/complainant have reported to this Court that the claim for compensation is paid and settled and that the complainant/respondent has no further amount to be received. If that fact is reported to the learned Magistrate, there cannot be any question of execution of the default sentence. The position has been made crystal clear in **Girish v. Muthoot Capital Service (P) Ltd.,** (2007 (1) KLT 16). I am of opinion that, in these circumstances, the joint statement can be accepted and it can be held that the claim for compensation has been paid and discharged even though the precise amount paid is not specified

in the joint statement produced as Annexure-D. The petitioner and the respondent/complainant can report that fact of discharge to the learned Magistrate. Thereafter, the learned Magistrate need only execute the substantive sentence of imprisonment till rising of court. The petitioner need now only appear before the learned Magistrate and suffer such substantive sentence of imprisonment till rising of court.

3. With the above observations, this petition is dismissed.

Sd/-

(R. BASANT, JUDGE)

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P.S. to Judge